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**DENIED**

9 Attorneys for Plaintiff  
10 NOMADIX, INC.

BY ORDER OF THE COURT

11 [FOR A COMPLETE LISTING OF DEFENDANTS'  
12 COUNSEL REFER TO SIGNATURE PAGE]

13  
14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 NOMADIX, INC.,

19 Plaintiff,

20 v.

21 HEWLETT-PACKARD COMPANY et  
al.,

22 Defendants.

23 AND RELATED COUNTERCLAIMS  
24

) Civil Action No.

) CV09-08441 DDP (VBKx)

) **[PROPOSED] PROTECTIVE  
ORDER**

) Honorable Victor B. Kenton

) NOTE DENIAL BELOW

1 Plaintiff Nomadix, Inc. and Defendants Hewlett-Packard Company,  
2 Wayport, Inc., iBAHN Corporation, Guest-Tek Interactive Entertainment Ltd.,  
3 Guest-Tek Interactive Entertainment Inc., LodgeNet Interactive Corporation,  
4 LodgeNet StayOnline, Inc., On Command Corporation, Aruba Networks, Inc.,  
5 Superclick, Inc. and Superclick Networks, Inc. (collectively, the “Parties”;  
6 individually, a “Party”) agree that each Party and any subsequently joined party  
7 may assert that it possesses information relating to the subject matter of this  
8 action which it deems confidential. The Parties recognize that in the course of  
9 discovery proceedings it may be necessary to disclose to another Party certain of  
10 the asserted confidential information, and each Party wishes to ensure that such  
11 asserted confidential information shall not be used for any purpose other than  
12 this action and shall not be made public by another Party beyond the extent  
13 necessary for purposes of this action. In addition, the Parties contemplate that  
14 confidential information may be produced by a non-party. The Parties therefore  
15 seek to facilitate the production and protection of such information.

16 Accordingly, based upon the agreement of the Parties and for good cause  
17 shown,

18 IT IS HEREBY ORDERED that whenever, in the course of these  
19 proceedings, any Party or non-party has occasion to disclose information  
20 deemed in good faith to constitute confidential information, the Parties and any  
21 such non-party shall employ the following procedures:

### 22 **DEFINITIONS**

23 1. As used herein, “document” shall have the meaning ascribed to it  
24 in Federal Rule of Civil Procedure 34(a), and shall include all “writings,”  
25 “recordings,” and “photographs” as those terms are defined by Rule 1001 of the  
26 Federal Rules of Evidence.

27 2. The term “Litigation Material” encompasses all documents,  
28 exhibits, excerpts, summaries, pleadings, reports, declarations, affidavits,

1 testimony, transcripts, interrogatory responses, admissions, or other discovery  
2 material and any copies thereof.

3 3. The term “Producing Party” refers to any Party or non-party that  
4 provides Litigation Material.

5 4. The term “Receiving Party” refers to any Party or non-party that  
6 receives, is shown or is otherwise exposed to Litigation Material.

7 5. The term “Action” refers to the suit pending in the United States  
8 District Court for the Central District of California as *Nomadix, Inc. v. Hewlett-*  
9 *Packard Company et al.*, Case No. CV09-8441 DDP (VBKx).

10 6. The term “Termination of this Action” refers to the completion of  
11 this Action through exhaustion of all appeals from orders and final judgments  
12 and/or settlement by the Parties.

13 **DESIGNATION**

14 7. Any Producing Party may designate Litigation Material as  
15 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in accordance  
16 with this Protective Order.

17 8. Nothing in this Protective Order is meant to apply to source code or  
18 material designated “Highly Confidential – Source Code – Restricted Access  
19 Only Material.” The Parties anticipate addressing the designation of, disclosure  
20 of, and security provisions regarding source code in a separate addendum to this  
21 Protective Order to be filed later.

22 9. The terms “Confidential Material” and “Highly Confidential –  
23 Attorneys’ Eyes Only Material” refer to: any Litigation Material designated  
24 “Confidential” and “Highly Confidential – Attorneys’ Eyes Only,” respectively;  
25 any copies thereof; and the information contained in such Litigation Material or  
26 such copies, including summaries of such information. The term “Protected  
27 Material” refers collectively to Litigation Material that has been designated  
28 Confidential Material and/or Highly Confidential – Attorneys’ Eyes Only

1 Material.

2 **Designation Procedure**

3 10. The designation of any Litigation Material as “Confidential” or  
4 “Highly Confidential – Attorneys’ Eyes Only” shall be deemed effective unless  
5 and until the Court orders otherwise or the Producing Party revokes the  
6 designation pursuant to paragraph 37.

7 11. To designate Litigation Material as “Confidential” or “Highly  
8 Confidential – Attorneys’ Eyes Only,” a Producing Party shall, when  
9 practicable, place the words “Confidential” or “Highly Confidential –  
10 Attorneys’ Eyes Only,” respectively, clearly on each page or portion of the  
11 Litigation Material the Producing Party seeks to protect pursuant to this  
12 Protective Order. In particular, electronic documents, documents in native  
13 format and/or data shall be so marked when practicable and, when not  
14 practicable, the disks, hard drives, or other media containing such documents  
15 and/or data shall be appropriately marked.

16 12. If, during any deposition in this Action, (i) a Producing Party’s  
17 Protected Material is disclosed or discussed or (ii), with respect to a given  
18 Producing Party, some of the deposition testimony otherwise qualifies for a  
19 confidentiality designation pursuant to any of paragraphs 15 through 16, the  
20 Producing Party may designate the pertinent deposition testimony (including  
21 exhibits) as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by:

- 22 (a) stating on the record during the deposition which portions of the  
23 testimony should be so designated; or  
24 (b) providing captioned, written notice to the reporter and all counsel of  
25 record of the page and line numbers of any portion of the transcript  
26 disclosing or discussing Protected Material, the number of any exhibits  
27 containing Protected Material, and the designation corresponding to  
28 each. Such notice by the Producing Party shall be given within thirty

(30) business days after the Producing Party receives written notice that a final transcript is available for review, in which case all counsel receiving such notice from the Producing Party shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the Producing Party.

13. If deposition testimony is designated pursuant to paragraph 12, one of the following legends, some combination thereof or a legend substantially similar to the same shall be placed on the front of any transcript or recording of such deposition:

Contains CONFIDENTIAL MATERIAL. Designated parts not to be used, copied or disclosed except as authorized by court order or the party or parties whose CONFIDENTIAL MATERIAL is included.

or

Contains HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY MATERIAL. Designated parts not to be used, copied or disclosed except as authorized by court order or the party or parties whose HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY MATERIAL is included.

14. From the time of any deposition through the end of thirty-one (31) business days after a final transcript of the deposition is made available by a reporter, the deposition (including exhibits) and any transcript or recording thereof shall be treated as Highly Confidential – Attorneys’ Eyes Only Material. At the end of the thirty-one (31) business days, the deposition (including exhibits) and any transcript or recording thereof shall be treated as public information (with no confidentiality designation) except to the extent designated pursuant to paragraph 12.

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1     **Designation Qualifications**

2           15.   Litigation Material may be designated “Confidential” if it is or  
3 contains: (a) information that is non-public; (b) information that includes trade  
4 secret or other confidential research, development, or commercial information,  
5 the disclosure of which the Producing Party reasonably believes could cause  
6 harm to the business operations of the Producing Party or provide improper  
7 business or commercial advantage to others; or (c) information that is protected  
8 by a right of privacy under federal or state law or any other applicable privilege  
9 or right related to confidentiality or privacy.

10           16.   Litigation Material may be designated “Highly Confidential –  
11 Attorneys’ Eyes Only” if it is or contains non-public information so  
12 commercially sensitive that disclosure of the information to an unaffiliated Party  
13 or non-parties would likely harm the competitive commercial position of the  
14 Producing Party or a non-party. The following are sample categories of  
15 Litigation Material qualifying for the “Highly Confidential – Attorneys’ Eyes  
16 Only” designation:

- 17           (a)   documents that describe the structure and/or operation of a Producing  
18 Party’s product at issue in this Action, including schematic diagrams,  
19 manufacturing drawings, engineering drawings, engineering change  
20 orders, engineering notebooks, specifications, software design  
21 documentation, system architecture documentation, research notes and  
22 materials, and other technical descriptions and/or depictions;
- 23           (b)   documents relating to a Producing Party’s prosecution of (i)  
24 unpublished patent applications or (ii) patents that have not yet issued  
25 and that contain claims that are not publicly known;
- 26           (c)   licensing and/or settlement-related documents including, but not  
27 limited to, communications with or between potential or actual  
28 licensors and licensees;

- (d) financial data or information, including information concerning sales, revenue, profit margins, costs, capacity, return on investment, capital expenditures, yields, utilization, or similar benchmarks;
- (e) customer lists;
- (f) business, strategy, or marketing plans;
- (g) price lists and/or pricing information;
- (h) information obtained from a non-party pursuant to a non-disclosure agreement;
- (i) agreements with any non-party, including OEMs, suppliers, distributors, and customers;
- (j) negotiations related to the sale of any product manufactured or sold by a Party or non-party, including data related to negotiations or sales opportunities;
- (k) budgets, forecasts, and projections;
- (l) any documents or things generated during the course of or as a result of any inspection of a Producing Party's facilities or process of product manufacture; and
- (m) any other information or documents, the disclosure of which the Producing Party can demonstrate would cause a clearly defined and serious injury.

### **DISCLOSURE**

17. Subject to the restrictions of paragraphs 18 through 19, a Receiving Party may disclose Protected Material to:

- (a) its own "Outside Counsel," i.e., the law firm(s) that are counsel of record for the Receiving Party, including the firm(s)' associated attorneys, law clerks, analysts, paralegals, secretaries, translators, clerical staff and other persons regularly employed by such law firm(s), and any temporary personnel retained by such law firm(s) to

1 perform legal or clerical duties or to provide logistical litigation  
2 support reasonably necessary to assist in the conduct of this Action—  
3 including service contractors (such as document copy services) and  
4 graphic artists—, provided that no person who is now or becomes a  
5 director, officer, or employee of a Party during the pendency of this  
6 Action shall be considered Outside Counsel;

7 (b) up to three designated in-house attorneys, legal counsel or employees  
8 of a Receiving Party deemed necessary by the Receiving Party's  
9 Outside Counsel to supervise or aid in the prosecution, defense, or  
10 settlement of this action, subject to the following: in the event that no  
11 objection is made pursuant to paragraph 35, the Receiving Party may  
12 only begin to disclose Protected Material to any such in-house  
13 attorney, legal counsel or employee ten (10) business days after  
14 serving on the other Parties' counsel a copy of the confidentiality  
15 agreement attached to this Protective Order as Exhibit A signed by  
16 such in-house attorney, legal counsel or employee and in the event an  
17 objection is made pursuant to paragraph 35, the Receiving Party may  
18 not begin to disclose Protected Material to any such in-house attorney,  
19 legal counsel or employee unless and until the Receiving Party and the  
20 objecting party resolve their dispute as memorialized in writing or the  
21 Court denies the objecting party's motion brought pursuant to  
22 paragraph 35;

23 (c) outside experts and consultants (together with their associates and  
24 clerical staff whose duties and responsibilities require access to  
25 Protected Materials) specifically engaged by the Receiving Party or by  
26 any attorney described in sub-paragraphs (a) or (b) to assist in the  
27 Action, subject to the following: the Receiving Party may disclose  
28 Protected Material to such an expert or consultant only to the extent



1 necessary to receive such assistance and, in the event that no objection  
2 is made pursuant to paragraph 35, may only begin to disclose  
3 Protected Material ten (10) business days after serving on the other  
4 Parties' counsel (i) a copy of the confidentiality agreement attached to  
5 this Protective Order as Exhibit A signed by such expert or consultant,  
6 (ii) a curriculum vitae of the proposed expert or consultant, including  
7 the expert or consultant's present business address(es), (iii) an  
8 identification of any past or present employment or consulting  
9 relationship with any Party, any related company or any company  
10 whose business relates or related to computer networks and an  
11 identification of the subject matter of any work performed in the  
12 course of such relationship, and (iv) a description of the expert or  
13 consultant's employment or consulting during the past four (4)  
14 calendar years, including the name and address of each person or  
15 entity who employed or used the services of the expert or consultant  
16 and an identification of the subject matter of any work performed in  
17 the course of such employment or consulting; and in the event an  
18 objection is made pursuant to paragraph 35, the Receiving Party may  
19 not begin to disclose Protected Material to any such expert or  
20 consultant unless and until the Receiving Party and the objecting party  
21 resolve their dispute as memorialized in writing or the Court denies  
22 the objecting party's motion brought pursuant to paragraph 35;

- 23 (d) jury consultants, trial consultants or mock jurors specifically engaged  
24 by the Receiving Party or by any attorney described in sub-paragraphs  
25 (a) or (b) to assist in the Action, subject to the following: (1) the  
26 Receiving Party may disclose Protected Material to a jury consultant,  
27 trial consultant or mock juror only to the extent necessary to receive  
28 jury, trial or mock juror assistance; (2) the Receiving Party may only

1 begin to disclose Protected Material to the jury consultant, trial  
2 consultant or mock juror after the individual has signed a copy of the  
3 confidentiality agreement attached to this Protective Order as Exhibit  
4 A, which copy the Receiving Party shall preserve for two (2) calendar  
5 years after the Termination of this Action; (3) any Protected Material  
6 in the form of physical documents or materials distributed to mock  
7 jurors under this subparagraph shall be retained by the Receiving Party  
8 at the time the mock juror's assistance has been completed; and (4)  
9 any jury consultant, trial consultant or mock juror to whom Protected  
10 Material is disclosed by the Receiving Party shall not be an officer,  
11 director, employee or attorney of the Receiving Party unless identified  
12 pursuant to subparagraph (b);

13 (e) translators of foreign language documents and testimony who are not  
14 permanently employed by the Receiving Party, subject to the  
15 following: the Receiving Party may disclose Protected Material to  
16 such an individual only to the extent necessary to receive such  
17 translation assistance and may only begin to disclose Protected  
18 Material after the individual has signed a copy of the confidentiality  
19 agreement attached to this Protective Order as Exhibit A, which copy  
20 the Receiving Party shall preserve for two (2) calendar years after the  
21 Termination of this Action;

22 (f) any interpreter, or court or other shorthand reporter or typist  
23 translating, recording or transcribing testimony given in this Action;

24 (g) authors, actual recipients, and named recipients (as expressly  
25 identified on the face of such Litigation Material) of such Litigation  
26 Material, even if such authors or recipients are not currently employed  
27 by the Parties;

28 (h) any person the Producing Party has identified pursuant to sub-

1 paragraphs (b) or (c), or any current and former officer, director,  
2 employee, agent, or Federal Rule of Civil Procedure 30(b)(6) designee  
3 of the Producing Party, during such person's deposition or other  
4 testimony in this Action; nothing in this subparagraph (h) prevents a  
5 Party or non-party from objecting to such a deposition;

6 (i) the Court, personnel of the Court and all appropriate courts of  
7 appellate jurisdiction;

8 (j) jurors serving in any trial of this Action; and

9 (k) any other person agreed to by the Producing Party in writing.

10 18. A Receiving Party may disclose Confidential Material only to the  
11 persons or entities identified in paragraphs 17(a) through 17(k).

12 19. A Receiving Party may disclose Highly Confidential – Attorneys'  
13 Eyes Only Material only to the persons or entities identified in paragraphs 17(a)  
14 and 17(c) through 17(k).

15 20. Upon learning during the pendency of this Action or within one  
16 hundred eighty (180) calendar days of the Termination of this Action that the  
17 information provided pursuant to paragraph 17(c) is inaccurate or incomplete  
18 with respect to a given individual, a Receiving Party shall, for any Producing  
19 Party whose Protected Material the Receiving Party disclosed to the individual,  
20 notify the Producing Party of such inaccuracy or incompleteness as well as the  
21 information the Receiving Party learned that led to the awareness of such  
22 inaccuracy or incompleteness.

23 21. If Protected Material is to be disclosed during a deposition, any  
24 persons present at the deposition who are not authorized to receive such  
25 Protected Material under this Protective Order shall be asked to leave the  
26 deposition during the testimony concerning such Protected Material.

27 22. Notwithstanding the foregoing, if Protected Material makes  
28 reference to the actual or alleged conduct or statements of a person who a

1 Receiving Party that is a Party has determined will be a witness, counsel for the  
2 Receiving Party may discuss the conduct or statements with the witness without  
3 revealing any other portion of the Protected Material and that discussion shall  
4 not constitute disclosure in violation of this Protective Order.

5 **SECURITY**

6 23. Nothing in this Protective Order shall impose any obligation on a  
7 Producing Party regarding the security, maintenance, storage, transport and/or  
8 transmission of its own Protected Material.

9 24. To the extent any Receiving Party (apart from the persons  
10 identified in paragraph 17(i)) maintains Protected Material, the Receiving Party  
11 shall maintain the Protected Material in a secure and safe area and shall exercise  
12 at least the same standard of due and proper care with respect to the storage,  
13 custody, use and/or dissemination of such information as is exercised by the  
14 Receiving Party with respect to its own proprietary information.

15 25. To the extent any Receiving Party (apart from the persons  
16 identified in paragraph 17(i)) discards or destroys Protected Material, the  
17 Receiving Party shall make reasonable efforts to do so in a secure manner.

18 **USE AND RETURN OR DESTRUCTION**

19 26. All Protected Material shall be used only in preparation for and  
20 trial of this Action, any appeal therefrom, or any proceeding to settle or resolve  
21 this Action. Protected Material cannot be used for any other purpose including,  
22 but not limited to, any business, proprietary, commercial, advancement of legal  
23 or equitable claims or defenses in any other litigation or legal proceeding,  
24 arbitration or proceeding, governmental purpose, or in connection with the  
25 preparation or prosecution of any patent application. Nothing in this Protective  
26 Order shall preclude a Producing Party from using or disseminating its own  
27 Protected Material in any way.

28 27. If a Receiving Party wishes to file any papers with the Court

1 containing Protected Material, the proposed filing shall be accompanied by an  
2 application to file the papers or the portion thereof containing the Protected  
3 Material (if such portion is segregable) under seal in accordance with Local  
4 Rule 79-5.1. Such application shall be directed to the judge to whom the papers  
5 are directed. For motions, the Receiving Party shall publicly file a redacted  
6 version of the motion and supporting papers. For any proposed filing by the  
7 Receiving Party containing Protected Material (or any other papers to be served  
8 by the Receiving Party containing Protected Material), unless the Producing and  
9 Receiving Parties agree otherwise, the Receiving Party shall serve the Producing  
10 Party via e-mail, a secure FTP or an established overnight, freight, delivery, or  
11 messenger service with a copy of the papers wherein the Producing Party's  
12 Protected Material is not redacted. The Receiving Party shall not serve the other  
13 Parties with such non-redacted copies of the papers. Instead, the Receiving  
14 Party shall only serve on the other Parties versions of the papers wherein the  
15 Producing Party's Protected Material is redacted; and if such an other Party  
16 would like non-redacted copies of such papers, it must request them from the  
17 Producing Party (and may seek the Court's assistance as necessary). Nothing in  
18 this paragraph 27 prevents a Defendant Receiving Party from serving on other  
19 Defendants a non-redacted copy of papers containing Protected Material of  
20 Nomadix subject to compliance with the other terms of this Protective Order.

21 28. The term "Protected Technical Material" refers to technical  
22 documents designated "Highly Confidential – Attorneys' Eyes Only" that  
23 describe the structure and/or operation of a Producing Party's product, including  
24 design documents, schematic diagrams, manufacturing drawings, engineering  
25 drawings, engineering notebooks, specifications, research notes and materials,  
26 and other technical descriptions and/or depictions, in whatever form such  
27 documents exist.

28 29. Any individual (including Outside Counsel) to whom any Protected

1 Technical Material has been disclosed that was produced by another Party or  
2 non-party and that has not lost its confidential status, shall not thereafter, until  
3 two (2) calendar years after the Termination of this Action, on behalf of a patent  
4 applicant or patentee, prepare and/or amend any patent applications of any kind,  
5 draft and/or amend patent claims of any kind (including claims that are the  
6 subject of reissue or reexamination proceedings), supervise such activities, or  
7 consult on such activities whenever such patent applications or patent claims  
8 relate to (1) the patents-in-suit or contain claims that it is reasonably likely may  
9 be asserted against the Producing Party in this Action or any other action; and  
10 relate to (2) charging for, providing or controlling access to computer networks,  
11 or to network devices involved in charging for, providing or controlling access  
12 to computer networks. Attorneys to whom Protected Technical Material has  
13 been disclosed may provide patent prosecution counsel with public information  
14 produced in this Action so that the information may be filed with the U.S. Patent  
15 Office. This paragraph shall not restrict consultation regarding strictly  
16 procedural or legal aspects of patent prosecution (including reissue or  
17 reexamination proceedings) that do not involve the merits, substance or  
18 technical nature of the patent prosecution. This paragraph shall also not restrict  
19 consultation regarding, or other involvement in, the preparation of arguments  
20 regarding prior art or patentability over prior art (including when such  
21 arguments are made in connection with reissue or reexamination proceedings).

22 30. Within ninety (90) calendar days of the Termination of this Action,  
23 all Parties, persons, and entities (including experts and consultants) who  
24 received Protected Material shall make a good faith effort to destroy or return to  
25 Outside Counsel for the Producing Party all Protected Material and any and all  
26 copies of such Protected Material, with the exception that Outside Counsel may  
27 retain a single copy of any of the following kinds of documents containing  
28 Protected Material: correspondence and legal files; papers served or filed in this

1 Action (including discovery papers such as expert reports); transcripts; trial and  
2 deposition exhibits; and items introduced at trial of this Action. Outside  
3 Counsel may also retain any working files, e-mails or e-mail folders containing  
4 such materials. Outside Counsel need not purge their document management  
5 systems or back-up tapes. Within one hundred twenty (120) calendar days of  
6 the Termination of this Action, any Receiving Party shall certify in writing to  
7 any Producing Party that all Protected Material it received from the Producing  
8 Party, except as specifically identified in this paragraph, has been returned or  
9 destroyed.

### 10 **OBJECTIONS**

11 31. A Receiving Party or other interested person may object to the  
12 designation given by the Producing Party to any Protected Material. The  
13 process for making such an objection and for resolving the dispute shall be as  
14 follows:

- 15 (a) The objecting party shall notify the Producing Party in writing as to its  
16 objections to the designation. This notice shall include, at a minimum,  
17 a specific identification of the designated material objected to as well  
18 as the reasons for the objections.
- 19 (b) Within ten (10) business days of the Producing Party's receipt of such  
20 notice, the objecting party and Producing Party shall confer in person  
21 or by telephone in a good faith effort to resolve the dispute and shall  
22 permit any other party interested in maintaining the Protected  
23 Material's designation to participate in the conference.
- 24 (c) If the conference does not resolve the dispute, the objecting party may  
25 bring a noticed motion to the Court pursuant to Local Rule 37 for a  
26 ruling that the Protected Material is not entitled to the designation  
27 given by the Producing Party or is entitled to a designation receiving  
28 greater protection under this Protective Order than that given by the



1 Producing Party.

2 32. Notwithstanding any such challenge to the designation of Protected  
3 Material, all Protected Material shall retain its status as Protected Material with  
4 such designation until (a) the Producing Party revokes the designation pursuant  
5 to paragraph 37, or (b) the Court rules that the designation is not proper and  
6 orders that the designation be removed, possibly to be replaced with a different  
7 designation.

8 33. In any challenge to the designation of Protected Material, the  
9 Producing Party shall have the burden of establishing that, pursuant to  
10 paragraphs 15 through 16, the Litigation Material is entitled to the designation  
11 the Producing Party gave it. Once the Producing Party meets this burden, the  
12 objecting party shall have the burden of rebutting the same or establishing that  
13 the Protective Order does not apply to the contested Litigation Material for any  
14 of the reasons set forth in paragraph 43.

15 34. No Receiving Party or other interested person shall be obligated to  
16 challenge the propriety or correctness of the designation of Protected Material  
17 and a failure to do so by a given date shall not preclude a subsequent challenge  
18 to such designation.

19 35. A Producing Party or other interested person may object to the  
20 proposed disclosure of Protected Material to any person described in paragraphs  
21 17(b) or 17(c). The process for making such an objection and for resolving the  
22 dispute shall be as follows:

23 (a) Within ten (10) business days of receiving the Receiving Party's  
24 written notice described in paragraphs 17(b) or 17(c), the objecting  
25 party shall notify the Receiving Party in writing as to its objections to  
26 the proposed disclosure. This notice shall include, at a minimum, a  
27 specific identification of the person objected to as well as the reasons  
28 for the objections.



1 (b) Within ten (10) business days of the Receiving Party's receipt of such  
2 notice, the objecting party and Receiving Party shall confer in person  
3 or by telephone in a good faith effort to resolve the dispute.

4 (c) If the conference does not resolve the dispute, the objecting party may  
5 bring a noticed motion to the Court pursuant to Local Rule 37 for an  
6 order prohibiting the proposed disclosure.

7 (d) The Receiving Party may not disclose Protected Material to the person  
8 objected to until, and only to the extent to which, (i) the Receiving  
9 Party and objecting party resolve their dispute as memorialized in  
10 writing or (ii) the Court denies the objecting party's motion.

11 36. Any such challenge to the disclosure of Protected Material to a  
12 person identified pursuant to paragraph 17(b) or 17(c) may not be made or  
13 renewed absent a showing of good cause. As one example, such good cause  
14 might exist if the objecting party discovers information after the ten-day period  
15 of paragraph 35(a) that reveals a reason for making the objection of which the  
16 objecting party was previously unaware (e.g., a person identified pursuant to  
17 paragraph 17(c) is an employee of a competitor of the objecting party).

### 18 **REVOCATION OF DESIGNATION**

19 37. Any Producing Party that has designated any Litigation Material as  
20 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" pursuant to this  
21 Protective Order may revoke such designation and relinquish the accompanying  
22 protections provided by this Protective Order by so notifying counsel for all  
23 other Parties in writing or by so stating on the record at any hearing or  
24 deposition, provided that any such revocation and relinquishment shall not  
25 prejudice or otherwise affect the right any other Party or non-party may have to  
26 designate the same Litigation Material as "Confidential" or "Highly  
27 Confidential – Attorneys' Eyes Only." Upon so revoking and relinquishing, the  
28 Producing Party may re-designate the Litigation Material with a designation

1 receiving less protection under this Protective Order than the original  
2 designation, in which case, unless the Producing and Receiving Parties agree  
3 otherwise, the Producing Party shall produce substituted, re-designated copies  
4 of the Litigation Material.

5 **INADVERTENT PRODUCTION, DISCLOSURE OR DESIGNATION**

6 38. A Producing Party that inadvertently produces Litigation Material  
7 that it believes is subject to the attorney-client privilege, attorney work product  
8 protection or any other privilege, immunity or non-waiver doctrine (e.g., the  
9 common interest doctrine) may, in writing, promptly upon discovery of such  
10 inadvertent disclosure, so advise the Receiving Party and request that the  
11 Litigation Material be returned or destroyed. The inadvertent production of  
12 Litigation Material will not waive any applicable privilege, immunity or non-  
13 waiver doctrine. In addition, the fact that Litigation Material was inadvertently  
14 produced shall not be used in any manner as evidence in support of any such  
15 alleged waiver. Within five (5) business days of receiving said written notice  
16 and request from the Producing Party, the Receiving Party shall return or  
17 destroy such inadvertently produced Litigation Material, including all copies  
18 and any notes or summaries referring to or relating to any such inadvertently  
19 produced Litigation Material. Nothing herein shall prevent the Receiving Party  
20 from preparing a record for its own use containing the date, author, address(es),  
21 and topic of the Litigation Material and such other information that is not  
22 privileged or otherwise protected as is reasonably necessary to identify the  
23 Litigation Material and describe its nature in a motion to compel production of  
24 the Litigation Material. Such a record of the identity and nature of the  
25 Litigation Material may not be used for any purpose other than preparation of a  
26 motion to compel in this Action. After returning or destroying the inadvertently  
27 produced Litigation Material, the Receiving Party may challenge the Producing  
28 Party's claim(s) of privilege, immunity or non-waiver by motion.

1           39. A Producing Party that inadvertently failed to designate Litigation  
2 Material as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”  
3 shall correct its failure within a reasonable time upon discovery of such  
4 inadvertent disclosure by providing written notice of the error and substituted,  
5 correctly-designated copies of the inadvertently produced Litigation Material.  
6 Any Receiving Party provided with such notice shall make reasonable efforts to  
7 retrieve and destroy all copies of the incorrectly designated Litigation Material,  
8 including copies disclosed or provided to others, as well as any notes or other  
9 materials relating to the incorrectly designated Litigation Material that this  
10 Protective Order would not have permitted had the Litigation Material been  
11 correctly designated. The Receiving Party will not have violated, and will not  
12 be liable under, this Protective Order by relying on the incorrect designation  
13 (including the absence of any designation), including by, prior to receiving  
14 written notice of the error, disclosing the Litigation Material or any information  
15 contained therein consistent with this Protective Order and the incorrect  
16 designation.

17           40. In the event a Receiving Party inadvertently discloses Protected  
18 Material to a person not qualified to receive the information under the Protective  
19 Order, such Receiving Party shall, upon learning of the disclosure: (i) promptly  
20 notify such unqualified person that the Protected Material contains confidential  
21 information subject to this Protective Order; (ii) promptly use reasonable efforts  
22 to retrieve the disclosed Protected Material from such unqualified person and  
23 any notes or other materials relating to the disclosed Protected Material and  
24 have such person execute the confidentiality agreement attached as Exhibit A to  
25 this Protective Order; (iii) promptly make all reasonable efforts to preclude  
26 further dissemination or use by such unqualified person; and (iv) bring all  
27 pertinent facts relating to such disclosure to the attention of the Producing Party  
28 within three (3) business days of learning of the inadvertent disclosure.

**EXEMPTIONS**

41. Nothing in this Protective Order authorizes any Party or non-Party to disobey any lawful request, subpoena or order by any court or any federal, state, or foreign governmental agency. However, if another person, court, or any federal, state, or foreign governmental agency requests, subpoenas, or orders the production of Protected Material from any person or Party subject to this Protective Order, that person or Party shall promptly notify the Producing Party in writing of the request, subpoena, or order, so that the Producing Party may have an opportunity to appear and be heard on whether the Protected Material should be disclosed. Should the Producing Party object to the production, it may seek appropriate relief from the appropriate court or agency, and pending such a request and, if necessary, the entry of an appropriate stay order, the person or Party receiving the request, subpoena, or order shall not produce the material in dispute so long as it may lawfully refuse.

42. Nothing in this Protective Order shall bar or otherwise restrict counsel from rendering advice to his or her client with respect to this Action and, in the course thereof, relying in a general way upon his or her examination of Protected Material produced in this Action, provided, however, that in rendering such advice and in otherwise communicating with his or her client, counsel shall not disclose the contents of Protected Material produced by any other Producing Party except as otherwise permitted by this Protective Order.

43. None of the provisions of this Protective Order shall apply to Litigation Material that was, is or becomes:

- (a) available to the public at the time of its production hereunder;
- (b) available to the public after the time of its production through no act, or failure to act, on behalf of the Receiving Party, its counsel, representatives or experts;
- (c) known to the Receiving Party, or shown to have been independently

1 developed by the Receiving Party, prior to its production herein  
2 without use or benefit of the produced Litigation Material;

3 (d) obtained outside this Action by the Receiving Party from the  
4 Producing Party without having been designated as confidential,  
5 provided, however, that this provision does not disturb any pre-  
6 existing obligation of confidentiality;

7 (e) obtained by the Receiving Party after the time of disclosure hereunder  
8 from a third party having the right to disclose the same; or

9 (f) previously produced, disclosed and/or provided by the Producing  
10 Party to the Receiving Party or any third party without an obligation of  
11 confidentiality.

12 **MISCELLANEOUS PROVISIONS**

13 44. This Protective Order is without prejudice to the right of any  
14 Producing Party to seek further or additional protection of information. Nothing  
15 in this Protective Order shall be deemed to bar or preclude any Producing Party  
16 from seeking such additional protection, including, without limitation, an order  
17 that certain matters may not be discovered at all.

18 45. This Protective Order is without prejudice to the right of any  
19 Receiving Party to seek modification of or relief from this Protective Order.  
20 Nothing in this Protective Order shall be deemed to bar or preclude any  
21 Receiving Party from seeking such modification or relief.

22 46. The entry of this Protective Order shall not be construed as a  
23 waiver of any right to object to the furnishing of information in response to  
24 discovery and, except as expressly provided, shall not relieve any Producing  
25 Party of the obligation of producing information in the course of discovery.

26 47. All notices required by this Protective Order are to be made by e-  
27 mail, certified mail or overnight mail to Outside Counsel representing the  
28 noticed Party or non-party. The date by which a Party or non-party receiving

1 notice shall respond or otherwise take action shall be computed from the date of  
2 receipt of the notice. Any of the notice requirements herein may be waived in  
3 whole or in part, but only in writing signed by an attorney for the Party or non-  
4 party that is otherwise to be noticed.

5 48. Nothing in this Protective Order obligates a defendant in this  
6 Action to produce its Protected Material to other defendants in this Action.

7 49. The terms of this Protective Order shall survive and remain in  
8 effect after the Termination of this Action. The Court shall retain jurisdiction to  
9 hear disputes arising out of this Protective Order.

10  
11  
12 DENIED WITHOUT PREJUDICE. Statement of good cause (Rule 26) is  
13 inadequate and lacks any detail or identification  
of types of information subject to order

14 Dated: August 13, 2010 \_\_\_\_\_/s/\_\_\_\_\_  
15 Honorable Victor B. Kenton

16  
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18  
19 Respectfully submitted,

20 KNOBBE, MARTENS, OLSON & BEAR, LLP

21  
22 Dated: August 6, 2010 By: /s/ Douglas G. Muehlhauser

23 John B. Sganga, Jr.  
24 Douglas G. Muehlhauser  
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26 Attorneys for Plaintiff  
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FENWICK & WEST LLP

Dated: August 6, 2010

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**EXHIBIT A**

I have read and fully understand the Protective Order entered on \_\_\_\_\_, 2010 in the matter of *Nomadix, Inc., v. Hewlett-Packard Company et al.*, Case No. CV09-8441 DDP (VBKx), and agree to be bound by and comply fully with the terms of such order. Specifically, I will not disclose or permit the unauthorized viewing or disclosure of Protected Material as set forth in the Protective Order. Furthermore, if Protected Technical Material is disclosed to me, I will not, until two (2) calendar years after the Termination of this Action, on behalf of a patent applicant or patentee, prepare and/or amend any patent applications of any kind, draft and/or amend patent claims of any kind (including claims that are the subject of reissue or reexamination proceedings), supervise such activities, or consult on such activities whenever such patent applications or patent claims relate to (1) the patents-in-suit or contain claims that it is reasonably likely may be asserted against the Producing Party in this Action or any other action; and relate to (2) charging for, providing or controlling access to computer networks, or to network devices involved in charging for, providing or controlling access to computer networks. I further understand that failure to comply fully with the terms of such Protective Order may lead to sanctions imposed by the Court. I submit myself to the Court's jurisdiction for purposes of enforcement of the Protective Order.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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